

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ANDREW TYLER FOSTER, et al.,)	
)	Case No. 6:15-cv-03519-BCW
Plaintiffs,)	
)	Consolidated with:
vs.)	
L-3 COMMUNICATIONS CORPORATION,)	Case No. 4:16-cv-00095-BCW
)	Case No. 6:16-cv-03109-BCW
Defendant.)	Case No. 4:16-cv-00438-BCW
)	Case No. 4:16-cv-00439-BCW

**DECLARATION OF JEANNE C. FINEGAN CONCERNING
IMPLEMENTATION AND ADEQUACY OF NOTICE PROGRAM**

I, JEANNE C. FINEGAN declare as follows:

INTRODUCTION

1. I am President and Chief Media Officer of HF Media, LLC, a division of Heffler Claims Group which specializes in the design and implementation of court approved legal notice plans. This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

2. Pursuant to the Order re: Plaintiffs Unopposed Motion for Preliminary Approval of Class Action Settlement, dated February 15, 2016, p. 8, my firm and I were appointed Settlement and Notice Administrator.

3. I submit this Declaration in order to provide the Court and the parties to the action a report regarding the successful implementation of this Notice Program, including the overall estimated target audience reach.

4. The basis for the assumptions articulated below includes research from reasonably relied upon media research data including GfK MediaMark Research and Intelligence LLC¹ (“MRI”), comScore² and Telmar³.

5. As described more fully below, the Notice Plan was successfully and timely implemented. In compliance with the Court’s Order, the Notice Plan commenced on March 24, 2017, and was substantially completed by April 24, 2017. Combined, the direct mail, media, including print and Internet banner ads and social media, is estimated to have reached more than 78 percent of the target audience *i.e.*, the Class, with an average frequency of over 6 times.

6. Pursuant to the Settlement Agreement, the Class is defined as:

All U.S. residents who are current owners of one or more Qualifying Holographic Weapon Sights that were manufactured between January 1, 2005 and November 1, 2016, and purchased for personal use on or before Preliminary Approval Order date or who previously returned one of these HWS models to EOTech and received a refund. Specifically excluded from the Class are Defendant and any of Defendant’s subsidiaries, divisions, affiliates, officers, employees and directors, as well as any assigned judges, and members of their families within the first degree of consanguinity, all members of the Court’s staff, Plaintiffs’ lawyers in this lawsuit; all Governmental entities and residents of one of the U.S. territories.

7. Evidence for the success of this robust notice program is found in the impressive volume of visitor traffic to this Settlement website. As of May 16, 2017, 265,976 users (people) have visited this website, with over 331,405 sessions⁴. Also, the site has a significant engagement factor, with over 20 percent of this traffic returning to

¹ GfK MRI's *Survey of the American Consumer*® is the industry standard for magazine audience ratings in the U.S. and is used in the majority of media and marketing agencies in the country. MRI provides comprehensive reports on demographic, lifestyle, product usage and media exposure.

<http://www.mri.gfk.com/>

² comScore is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data. comScore maintains a proprietary database of more than 2 million consumers who have given comScore permission to monitor their browsing and transaction behavior, including online and offline purchasing. This data includes and fuses 1st party, (website data), second party (data shared by websites for marketing purposes) and 3rd party data, tied to offline purchasing behavior. www.comscore.com/.

³ Telmar provides a cross tabulation platform to provide reach and frequency analysis.

⁴ A session is a period of time that a user is actively engaged with a website.

the site multiple times.

8. This program is not only consistent with, but indeed exceeds, other similar notice plans approved by various courts as the “best notice practicable” meeting the requirement of Fed. Civ. P. 23(c)(2)(B) and the Federal Judicial Center (“FJC”) guidelines⁵ for adequate notice.

QUALIFICATIONS

9. A comprehensive description of my credentials that qualify me to provide expert opinions on the adequacy of class action notice programs was previously filed with this Court on February 13, 2017. In summary, I have served as an expert, directly responsible for the design and implementation of hundreds of class action notice programs, including Federal Trade Commission Enforcement actions, some of which are the largest and most complex programs ever filed in both the United States and in Canada.

10. My work as an expert includes a wide range of class actions and regulatory and consumer matters that include product liability, construction defect, antitrust, asbestos, medical pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance and bankruptcy.

11. Further, I have been at the forefront of modern notice, including plain language as noted in a RAND study⁶, and importantly, integrating digital media and social media into court-approved legal notice programs such as:

- *Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc.*, Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016);
- *Cook et. al v. Rockwell International Corp. and the Dow Chemical Co.*, No. 90-cv-00181- KLK (D.Colo. 2017);
- *In re: TracFone Unlimited Service Plan Litigation*, No. C-13-3440 EMC (N.D.CA 2015); and
- *In re: Skechers Toning Shoes Products Liability Litigation*, No. 3:11-MD-2308-TBR (W.D. Ky. 2012).

⁵ Notice Checklist and Plain Language Guide (2010) (“Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide”).

⁶ Deborah R. Hensler, et al., *Class Action Dilemmas, Pursuing Public Goals for Private Gain* (Rand 2000).

12. In evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example, in:

a) ***Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc.***, Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ... There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. ... The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members."

13. Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, gave accolades to Ms. Finegan, noting:

"I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."

b) ***In Cook et al v. Rockwell International Corp. and the Dow Chemical Co.***, No. 90-cv-00181- KLK (D. Colo. 2017). aka, Rocky Flats Nuclear Weapons Plant Contamination. In the Order Granting Final Approval, dated April 28, 2017, p. 3, the Honorable John L. Kane stated:

The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, ... and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. ... Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.

c) ***In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR*** (W.D. Ky. 2012). In his Final Order and Judgment

granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

“... The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.”

d) ***Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB*** (NYSD) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti gave accolades to Ms. Finegan, noting:

“The notice plan was the best practicable under the circumstances. ... [and] the proof is in the pudding. ... So the notice has reached a lot of people and a lot of people have made claims.”

14. A comprehensive description of my credentials is attached as **Exhibit A**.

NOTICE PROGRAM SUMMARY

15. In compliance with the Court’s Order, the Notice Program included the following components:

- Direct mail notice by first-class U.S. mail and email to reasonably identifiable Class Members;
- CAFA Notice to appropriate state and federal government officials;
- Publication of a short-form notice (“Publication Notice”) in nationally circulated consumer magazines;
- Publication of a short-form notice in specialty gun enthusiast magazines;
- Publication in specialty gun enthusiast e-newsletters;
- Online display banner advertising specifically targeted to reach Class Members;
- Online display advertising on dedicated gun enthusiast websites;
- Mobile and App advertising specifically targeted to reach Class Members;
- Social media through Facebook, Twitter and Instagram;
- Search words and terms on Google AdWords;

- An informational website (www.fostersettlement.com) on which the notices and other important Court documents are posted; and
- A toll-free information line (844-702-2787) where Class Members can call 24/7 for more information about the Settlement, including, but not limited to, requesting copies of the Long Form Notice, Claim Form or Opt-Out Request Form.

DIRECT MAIL NOTICE

16. On March 15, 2017, Heffler received a data file from EOTech with 40,858 names and addresses of reasonably ascertainable customers. A supplemental data file containing 2,292 records was also received on March 21, 2017. I further understand that because EOTech historically sold through distributors and retailers, rather than directly to consumers, it has only limited, often incomplete, records of product registrations that can identify members of the Class.

17. Upon receipt of EOTech's data, Heffler performed an analysis of the class records to determine the quality of the data and identify the unique individual records. Each record was assigned an identification number that was used for tracking purposes.

18. Prior to mailing the Notice to Class Members, Heffler updated all Class Members mailing addresses utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service ("the USPS"). The NCOA contains change of address notifications filed with the USPS. In the event any individual had filed a USPS change of address notification, the address listed with NCOA was used in connection with the mailing of any Notices sent via first class U.S. Mail. 446 records were removed for having a foreign address and an additional 1,385 records were removed after being identified as a government entity. Notices were mailed to the remaining 41,319 class members on April 4, 2017. A total of 360 notices were returned as undeliverable.

19. On April 21, 2017, Heffler received an additional data file from EOTech containing 6,994 records to receive an email containing the Notice. Of the 6,994 records received Heffler identified 1,636 as either not having email address, containing an invalid email address, or containing a duplicate email address. An email blast to the remaining

5,358 class members occurred on April 21, 2017, the same day the data was received. A total of 233 emails returned as hard bounces and another 57 were returned as invalid.

NOTICE PROGRAM AS IMPLEMENTED

Publication Elements - Magazine

20. Magazines are now commonly referred to as traditional media. The magazines below were selected based on the highest coverage and index⁷ against the target audience (rifle owners) characteristics. Additionally, specific titles including *American Rifleman* and *Guns & Ammo* were selected based on their previous inclusion in EOTech marketing and advertising campaigns.

Magazine Title	Circulation	Readers	On Sale Date	Insertions
<i>American Rifleman</i>	2,094,346	5,419,000	4/24/17	1
<i>America's 1st Freedom</i>	661,206	756,700	4/24/17	1
<i>Guns & Ammo</i>	420,645	9,951,000	4/4/17	1
<i>American Hunter</i>	951,289	4,147,000	4/24/17	1
<i>Sports Illustrated</i>	3,057,042	18,237,000	4/12/17	1
<i>S.W.A.T</i>	48,240	1,967,420	4/11/17	1

Attached as **Exhibit B** are copies of the magazine tear sheets as they were published.

PUBLICATION ELEMENTS - INTERNET AND SOCIAL MEDIA

21. According to MRI data, 87 percent of rifle owners are online, which makes online notice in this case particularly important. This program took a unique and highly effective layered approach to online notice delivering over 203,000,000 online and social media impressions:

⁷ Index is a media metric that describes a target audience's inclination to use a given outlet. An index over 100 suggests a target population's inclination to use a medium to a greater degree than the rest of the population. For example, an index of 157 would mean that the target is 57 percent more likely than the rest of the population to use a medium.

a) Online banner ads *specifically appeared* on 10 highly relevant gun enthusiast, shooting and outdoor sports websites/networks. Ads on these sites appeared in prominent positions, such as on the home page. Websites included:

<i>Outdoor Sportsman Group Network, including:</i>		<i>Grand View Outdoors Group Network, including:</i>	<i>Individual sites including:</i>
<i>Rifleshooter</i>	<i>Firearms News</i>	<i>Bowhunting World</i>	<i>Field&Stream.com</i>
<i>Shooting Times</i>	<i>Handguns</i>	<i>Archery Business</i>	<i>OutdoorLife.com</i>
<i>Guns & Ammo</i>	<i>Sportsmen Vote</i>	<i>Predator Xtreme</i>	<i>AR15.com</i>
<i>In-Fisherman</i>	<i>Wildfowl</i>	<i>Tactical Retailer</i>	<i>GunBroker.com</i>
<i>Fly-Fisherman</i>	<i>Petersen's Hunting</i>	<i>Shooting Sports Retailer</i>	<i>GunsAmerica.com</i>
<i>Game & Fish</i>	<i>Sportsman Channel</i>	<i>AR Guns & Hunting</i>	<i>SilencerTalk.com</i>
<i>Florida Sportsman</i>	<i>Gun Dog</i>		<i>TheHighRoad.org</i>
<i>Bass Fan</i>	<i>North American Whitetail</i>		
<i>Bowhunter</i>	<i>World Fishing Network</i>		

b) Online display banners also appeared in the e-newsletters⁸ of six⁹ highly relevant digital magazines.

Title	Circulation	Issued Date
<i>Field & Stream</i>	175,000	4/7/17 & 4/14 ¹⁰
<i>Grand View Outdoors</i> ¹¹	64,000	4/5/17
<i>Hunting</i>	70,000	4/19/17
<i>Outdoor Life</i>	90,000	4/13/17
<i>Rifle Shooter</i>	20,000	4/11/17

⁸ The combined total circulation of the e-newsletters is 484,000.

⁹ A seventh newsletter, *Firearms News*, did not run the ad due to lack of advertising inventory at time of placement.

¹⁰ Due to an error on the publisher's part, the initial scheduled insertion date was missed, and the publisher offered a second additional make-good insertion at no charge. All publication occurred in the notice time period.

¹¹ Includes *Bowhunting World*, *Archery Business*, *Predator Xtreme*, *Whitetail Journey*, *Tactical Retailer*, *Shooting Sports Retailer* and *AR Guns & Hunting*.

<i>Shooting Times</i>	65,000	4/6/17
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22. Further, as part of a programmatic strategy¹², online display banner ads were served on three digital networks: *Conversant*, where ads appeared on more than 875 individual website partners, *Google Display*, where banner ads appeared on more than 350 sites in their network, and *Xaxis* where ads appeared on 430 partner properties¹³.

Attached as **Exhibit C** are screen shots of the various ads as they appeared on the websites.

23. Potentially affected Class Members were targeted online through various tactics including:

- a) **Contextual targeting:** Online display banners appeared on websites relevant to the audience, such as websites with content focused on shooting, weapons, weapon accessories, etc.
- b) **Demographic targeting:** According to MRI data, nearly 75 percent of rifle owners are over the age of 35 and over 70 percent are male¹⁴.
- c) **Audience targeting:** Online display banners were targeted to known gun owners along with those in the military or protective services.
- d) **Search/Keyword targeting:** Ads appeared in Google search results based on identified search terms and keywords. Those keywords included: EOTech, L3 EOTech holographic sight, EOTech settlement, EOTech class action, among others.
- e) **Retargeting:** Banners were retargeted (served again as reminders) to people who previously visited the website but did not file a claim, or abandoned the claim prior to submission.
- f) **Whitelisted News and Weather:** Banner ads were served on a whitelist¹⁵ of over 200 premium national news and weather websites such as cnn.com, fox.com, accuweather.com, and weather.com. As an added layer, the program ran in local markets across the country on newspaper, television and radio news sites.

¹² Programmatic Buying describes online display advertising that is aggregated, booked, flighted, analyzed and optimized via demand side software interfaces and algorithms. While it includes real time buying (“RTB”), it also includes non-RTB methods and buy types such as Facebook Ads. Programmatic also implies the use of multi-sourced data signals to inform targeting and optimization decisions.

¹³ These websites represent properties running over 70 percent of the impressions.

¹⁴ While this program is appropriately weighted to a male target, it also reached a female audience within the same demographic as well as reached older and younger age demographics.

¹⁵ Whitelisted sites are specifically selected web properties on which an advertiser will permit their ads to be placed.

PUBLICATION ELEMENTS - SOCIAL MEDIA

24. Finally, banner ads appeared on social media platforms including Facebook, Instagram and Twitter, specifically targeting users who had engaged with content and groups related to scopes, rifles, gun accessories, firearms, NRA, Second Amendment and more. The Facebook ads appeared in the form of news feed ads. Attached as **Exhibit D** are screenshots of the Notice Program ads as they appeared on Social Media.

25. Privacy: As part of our retargeting effort, we are also mindful of privacy considerations. Therefore, an *AdChoices*¹⁶  (privacy) icon was placed on all ads, where available, for those who choose not to be provided with continued reminders.

CAFA NOTIFICATION

26. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715(b), Heffler provided notice of the proposed settlement by First Class Certified U.S. Mail to all 50 state Attorneys General, the U.S. Attorney General, the acting ATF Director and appropriate U.S. Acting Territorial Attorneys. Attached as **Exhibit E** are the letters and supporting materials.

OFFICIAL SETTLEMENT WEBSITE

27. In compliance with the order and the Settlement Agreement, Paragraph II A2, an official website was established on March 24, 2017 where Class Members could obtain further information about the class action, their rights, and related information, including the Settlement Agreement, Court Orders, and Plaintiffs’ Fees, Expenses, and Incentive Awards. The website address was prominently displayed in the publication notice and is accessible 24-hours a day, 7-days a week.

28. Evidence for the success of this robust notice program is found in the impressive amount of visitor traffic to this website. As of May 16, 2017, 265,976 users

¹⁶ The AdChoices Icon is a sign for consumer information and control for interest-based advertising (which is also referred to as “online behavioral advertising.”) The AdChoices Icon gives browsers the ability to control whether they receive interest-based advertising and from which companies.

(people) have visited this website, with over 331,405 sessions.¹⁷ Also, the site has a significant engagement factor, with over 20 percent of this traffic returning to the site multiple times. We also note that since the notice program concluded, an average of 800 visitors continue to browse the site's pages each day.

TOLL FREE HELP LINE

29. Pursuant to the Settlement Agreement, on March 24, 2017, Heffler created an Interactive Voice Response (the "IVR") system, which established a 24-hour toll-free telephone line, 1-844-702-2787, where callers could obtain information about the class action. Heffler added the option on the IVR system which allows someone to speak to a live operator. The staff members of the Heffler Call Center were trained in the details of this settlement so that they could provide information to Class Members. To date, the toll free number has received 5,159 IVR calls and 3,040 calls directed to a live operator. The calls to the helpline included 253 hours, 4 minutes of IVR time and 23 hours, 44 minutes, of live operator time through the time of execution of this declaration. This IVR system will remain active until Heffler is instructed by the parties to deactivate the call center.

CONCLUSION

30. In my opinion, the outreach efforts employed for this Notice Program reflected a particularly appropriate, highly targeted and contemporary way to provide notice to this class. Importantly, the Notice Program was reasonably calculated, using tools and methods accepted within the advertising industry, to provide notice that is consistent with best practicable court-approved notice plans in similar matters and is consistent with the Federal Judicial Center's guidelines concerning appropriate reach. This program was reasonably calculated using appropriate tools and methodology accepted in the advertising industry estimated to effectively reach over 78 percent of rifle owners, with an average frequency of over 6 times.

¹⁷ A session is a period of time that a user is actively engaged with a website.

31. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 18, 2017 in Tigard, Oregon.



Jeanne C. Finegan, APR